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5  
6 **UNITED STATES DISTRICT COURT**  
**FOR THE**  
7 **DISTRICT OF NEW JERSEY**

8 GREGORY ADAMS, )  
9 Plaintiff )  
10 v. ) **Case No.:**  
11 MAIN STREET ACQUISITIONS ) **COMPLAINT AND DEMAND FOR**  
12 CORPORATION, ) **JURY TRIAL**  
13 Defendant ) **(Unlawful Debt Collection Practices)**

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15 **COMPLAINT**

16 GREGORY ADAMS (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
17 alleges the following against MAIN STREET ACQUISITIONS CORPORATION  
18 (“Defendant”):

19  
20 **INTRODUCTION**

21 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15  
22 U.S.C. § 1692 *et seq.* (“FDCPA”), which prohibits debt collectors from engaging in abusive,  
23 deceptive, and unfair practices. Plaintiff further alleges a claim for invasion of privacy ancillary  
24 to Defendant’s collection efforts.  
25

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the State of New Jersey and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

## PARTIES

6. Plaintiff is a natural person residing in Salem, New Jersey, 08079.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company located at 3715 DaVinci Court, Suite 200, Norcross, Georgia 30092, with a second address at 2877 Paradise Road, Unit 303, Las Vegas, Nevada, 89109.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and/or insurers.

**PRELIMINARY STATEMENT**

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f. The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.

13. In enacting the FDCPA, the United States Congress found that “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many

1 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
2 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
3 additionally found existing laws and procedures for redressing debt collection injuries to be  
4 inadequate to protect consumers. 15 U.S.C. § 1692b.

5 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
6 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
7 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
8 collection practices are not competitively disadvantaged, and to promote consistent State action  
9 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
10

## 11 12 **FACTUAL ALLEGATIONS**

13 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
14 debt from Plaintiff.

15 16. The alleged debts at issue arose out of transactions, which were primarily for  
16 personal, family, or household purposes.

17 17. Beginning within one year prior to the filing of this case and continuing until  
18 August of 2010, Defendant and its agents engaged in debt collection activities seeking payment  
19 from Plaintiff for an alleged First National Bank of Omaha debt.  
20

21 18. Defendant, through its agent Mercantile Adjustment Bureau, harassed Plaintiff by  
22 making continuous calls to his cellular telephone number and work telephone number.

23 19. Defendant, through its agent Mercantile Adjustment Bureau, placed repeated calls  
24 to Plaintiff’s cellular telephone almost every day, causing Plaintiff to receive, at times, more  
25 than two (2) to four (4) collection calls a day; and more than ten (10) collection calls a week.

1           20. Defendant, through its agent Mercantile Adjustment Bureau, also harassed  
2 Plaintiff by immediately calling Plaintiff back after a telephone call was terminated.

3           21. On or about June 22, 2010, Defendant sent correspondence to Plaintiff purporting  
4 to validate the alleged debt.

5           22. In its June 22, 2010 letter, Defendant indicated it was seeking to gather  
6 documentation requested by Plaintiff from its client and would forward the same upon receipt,  
7 but then confusingly quoted a Fourth Circuit opinion, which indicated it did not have to provide  
8 copies of bills or evidence of the debt. See Exhibit “A,” Defendant’s June 22, 2010 letter.

9           23. This was confusing to Plaintiff who did not then know if Defendant would  
10 provide him with information regarding the debt in light of its two conflicting statements. See  
11 Exhibit “A.”  
12

13           24. Despite its representation that it was gathering additional documentation from its  
14 client, Defendant failed to ever provide Plaintiff with information from the original creditor.

15           25. Further, Defendant’s reference to a legal opinion was deceptive and confusing to  
16 Plaintiff, as it overshadowed and obfuscated the notice that appeared just below, which indicated  
17 Plaintiff could seek verification of the debt and/or dispute the debt. See Exhibit “A.”

18           26. Defendant’s actions in attempting to collect the alleged debt were harassing,  
19 abusive and highly deceptive.  
20

21           27. Further, based on information and belief, Defendant has failed to pay the required  
22 Collection Agency Bond. See Exhibit “B,” Collection Agency Bond Status report.

1                                   **CONSTRUCTION OF APPLICABLE LAW**

2           28.     The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
3 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
4 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
5 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
6 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
7 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

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9           29.     The FDCPA is a remedial statute, and therefore must be construed liberally in  
10 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
11 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
12 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
13 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
14 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
15 2002).

16           30.     The FDCPA is to be interpreted in accordance with the “least sophisticated”  
17 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
18 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
19 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
20 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
21 and the fact that a false statement may be obviously false to those who are trained and  
22 experienced does not change its character, nor take away its power to deceive others less  
23 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
24 ensures protection of all consumers, even naive and trusting, against deceptive collection  
25

1 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
2 collection notices. Clomon, 988 F. 2d at 1318.

3  
4 **COUNT I**  
5 **DEFENDANT VIOLATED THE**  
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 31. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
8 more of the following ways:

- 9 a. Defendant violated of the FDCPA generally;
- 10 b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in  
11 connection with the collection of an alleged debt;
- 12 c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
13 telephone to ring repeatedly or continuously with the intent to harass, annoy  
14 or abuse Plaintiff;
- 15 d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or  
16 misleading representations or means in connection with the collection of a  
17 debt;
- 18 e. Defendant violated § 1692e(10) of the FDCPA by using false representations  
19 or deceptive means to collect or attempt to collect a debt;
- 20 f. Defendant violated § 1692f of the FDCPA by using unfair and  
21 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 22 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
23 and failed to comply with the FDCPA.
- 24  
25

1 WHEREFORE, Plaintiff, GREGORY ADAMS, respectfully prays for a judgment as follows:

- 2 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
3 1692k(a)(1);  
4 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
5 15 U.S.C. § 1692k(a)(2)(A);  
6 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
7 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
8 d. Any other relief deemed appropriate by this Honorable Court.

9 **DEMAND FOR JURY TRIAL**

10 PLEASE TAKE NOTICE that Plaintiff, GREGORY ADAMS, demands a jury trial in  
11 this case.

12  
13 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

14 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not  
15 subject to any other action pending in any court, arbitration or administrative proceeding.  
16

17  
18 RESPECTFULLY SUBMITTED,

19 DATED: June 22, 2011

KIMMEL & SILVERMAN, P.C..

20 By: /s/ Amy L. Bennecoff

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